

*Draft Regulations laid before Parliament under paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2020 No.**

**EXITING THE EUROPEAN UNION  
ELECTRONIC COMMUNICATIONS  
BROADCASTING**

**The Audiovisual Media Services  
(Amendment) (EU Exit) Regulations 2020**

*Made* - - - - *\*\*\**

*Coming into force in accordance with regulation 2*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018<sup>(1)</sup>. In accordance with paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

**Citation, commencement and interpretation**

1. These Regulations may be cited as the Audiovisual Media Services (Amendment) (EU Exit) Regulations 2020.
2. These Regulations come into force immediately before IP completion day except for regulation 4 which comes into force on IP completion day.
3. In these Regulations, “the 2003 Act” means the Communications Act 2003<sup>(2)</sup>.

**Video-sharing platform services: United Kingdom jurisdiction**

4.—(1) Section 368S of the 2003 Act (meaning of “video-sharing platform service”)<sup>(3)</sup> is amended as follows.

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(1) 2018 c. 16; section 8 was amended by section 27 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) and paragraph 21 was amended by paragraph 53 of Schedule 5 to that Act.  
(2) 2003 c. 21.  
(3) Section 368S was inserted by S.I. 2020/1062.

(2) In subsection (2), for paragraph (d) substitute—

“(d) the person providing it has the required connection with the United Kingdom.”.

(3) After subsection (2) insert—

“(3) For that purpose, the person providing the service or the dissociable section of the service (P) has the required connection with the United Kingdom in either of the following cases.

(4) Case A is where P provides the service, or the dissociable section of the service, using a fixed establishment in the United Kingdom for an indefinite period and effectively pursues an economic activity in doing so.

(5) Case B is where—

(a) P is not under the jurisdiction of an EEA State for the purposes of the Audiovisual Media Services Directive<sup>(4)</sup>; and

(b) a group undertaking of P is established in the United Kingdom.

(6) For the purposes of subsection (4)—

(a) the presence and use of the technical means and technologies required to provide the service, or the dissociable section of the service, do not in themselves constitute an establishment of P; and

(b) in a case where it cannot be determined from which of a number of places of establishment in the EEA or the United Kingdom a particular service, or a particular dissociable section of a service, is provided, that service or dissociable section of a service is to be regarded as provided from the place of establishment which is the centre of P’s activities relating to that service or dissociable section of a service.

(7) In subsection (5) “undertaking” and “group undertaking” each has the meaning given by section 1161 of the Companies Act 2006<sup>(5)</sup>, except that “group undertaking” also includes all other undertakings having economic and legal organisational links to P.

(8) For the purposes of this section a person is “not under the jurisdiction of an EEA State” if OFCOM knows, or has reasonable grounds for believing, that the person—

(a) is not established on the territory of an EEA State in accordance with paragraph (1) of Article 28a of the Audiovisual Media Services Directive, and

(b) is not deemed to be established on the territory of any EEA State in accordance with paragraphs (2) to (4) of that Article.

(9) The references in this section to the Audiovisual Media Services Directive are to that Directive as it has effect from time to time in EU law.”.

### **Amendment of references to ‘exit day’ in the Broadcasting (Amendment) (EU Exit) Regulations 2019**

5.—(1) The Broadcasting (Amendment) (EU Exit) Regulations 2019<sup>(6)</sup> are amended as follows.

(2) In regulation 5, for “exit day”, in each place where it occurs, substitute “IP completion day”.

(3) In regulation 6, for “exit day” substitute “IP completion day”.

(4) In paragraph 19(2)(b) of Schedule 1, in the amendment of section 75(2)(b) of the 2003 Act, for “exit day” substitute “IP completion day”.

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(4) OJ No. L 95, 15.4.2010, p. 1; amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 (OJ No. L 303, 28.11.2018, p. 69).

(5) 2006 c. 46.

(6) S.I. 2019/224.

(5) In paragraph 21 of Schedule 1, in the insertion of section 211A(2)(a) of the 2003 Act, for “exit day” substitute “IP completion day”.

(6) In paragraph 24 of Schedule 1, in the insertion of section 319(2)(ha) of the 2003 Act, for “exit day” substitute “IP completion day”.

Date

*Name*  
Minister of State for Digital and Culture  
Department for Digital, Culture, Media and  
Sport

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers in section 8 of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular, deficiencies falling within subsection (2)(c) and (d) of section 8) arising from the withdrawal of the United Kingdom from the European Union.

Regulation 4 remedies a deficiency in the determination of United Kingdom jurisdiction in respect of video-sharing platform services after IP completion day (“IP completion day” is defined in the European Union (Withdrawal Agreement) Act 2020 (c.1) as 11pm on 31st December 2020). It sets out how jurisdiction is to be determined after that time.

Regulation 5 substitutes “IP completion day” for various references to “exit day” in the Broadcasting (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/24). This will ensure that the provisions in the existing regulations will take effect by reference to IP completion day rather than exit day.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.